

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 23

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RICHARD F. CARROTT

Appeal No. 2002-0828
Application No. 09/475,126

ON BRIEF

Before FLEMING, RUGGIERO, and SAADAT, ***Administrative Patent Judges.***

FLEMING, ***Administrative Patent Judge.***

DECISION ON APPEAL

This is a decision on appeal from the final rejection of claims 1-42, all the claims present in the instant application.

Invention

The invention relates to e-commerce. In particular, the invention relates to promoting sales of services and merchandise over the Internet. See page 1 of Appellant's specification. The invention solves the problem of how to divide an otherwise indivisible Internet into defined geographic areas for useful purposes such as promoting product sales and paying commissions. See page 5 of Appellant's specification.

Appeal No. 2002-0828
Application No. 09/475,126

Appellant's claim 1 is representative of the claimed invention and is reproduced as follows:

A method of allocating commissions comprising:

providing exclusive geographic distribution/representation areas;

recording sales to said exclusive geographic distribution/representation areas placed through an Internet web site;

determining a value of said sales to each of said geographic distribution/representation areas; and

allocating said commissions based solely on said value of said sales delivered to each of said geographic distribution/representation areas.

References

The references relied on by the Examiner are as follows:

Smithies et al.	6,091,835	Jul. 18, 2000
(Smithies)		(filed Feb. 17, 1998)

<http://www.travelsavers.com/about.asp>

Rice, Kate "Consumer Web Site Breaks New Ground" Leisure Travel News, v15, n21 (June 7, 1999) p11;

SanFilippo, Michelle "Travelsavers' Rescue Plan" Travel Agent, v295, n12 (July 12, 1999) p21

Rejections at Issue

Claims 1-6, 8-13, 15-20, 22-27, 29 and 36 stand rejected under 35 U.S.C. § 102 as being anticipated by Travelsavers.¹

Claims 7, 14, 21, 28, 30-35 and 37-42 stand rejected under 35 U.S.C. § 103 as being unpatentable over Travelsavers in view of Smithies.

Throughout our opinion, we will make reference to the briefs² and the answer.

OPINION

With full consideration being given the subject matter on appeal, the Examiner's rejections and the arguments of Appellant and the Examiner, for the reasons stated *infra*, we reverse the Examiner's rejection of claims 1-6, 8-13, 15-20, 22-27, 29 and 36 under 35 U.S.C. § 102 and we reverse the Examiner's rejection of claims 7, 14, 21, 28, 30-35 and 37-42 under 35 U.S.C. § 103.

¹ Travelsavers is a multi-million dollar chain of independent travel agencies operating as a business in the United States and Mexico as well as over 9,000 worldwide affiliates. The Examiner has used Rice and SanFilippo and the Travelsavers' web page to establish how and when this business operates.

² Appellant filed an appeal brief on June 18, 2001. Appellant filed a reply brief on January 7, 2002. The Examiner mailed an Office communication on January 18, 2002 stating that the reply brief has been entered.

Appeal No. 2002-0828
Application No. 09/475,126

Rejection under 35 U.S.C. § 102

The Appellant argues that the Examiner has not established that Travelsavers allocates commissions based solely on the value of said sales delivered to each of the geographic distribution/representation areas. In particular, Appellant argues that the evidence relied on by the Examiner which is the Rice and SanFilippo articles as well as the Travelsavers web site does not utilize the delivery location of goods or services to calculate commissions as in the claimed invention. Furthermore, Appellant argues that Travelsavers does not handle or administer any type of commissions to its member agents. Appellant argues that Travelsavers only provides a referral and allows each individual member travel agent to profit from that referral according to each travel agent's individual marketing system. See pages 8-12 of the brief and the reply brief.

It is axiomatic that anticipation of a claim under § 102 can be found only if the prior art reference discloses every element of the claim. ***See In re King***, 801 F.2d 1324, 1326, 231 USPQ 136, 138 (Fed. Cir. 1986) and ***Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick Co.***, 730 F.2d 1452, 1458, 221 USPQ 481, 485 (Fed. Cir. 1984).

Appeal No. 2002-0828
Application No. 09/475,126

Upon our review of the Travelsavers' website, Rice and SanFilippo, we fail to find that these references teach a system for allocating commissions. Travelsavers presents a web-base system that provides national marketing and advertising initiatives to motivate customers to travel and then the website refers them to member agencies. Travelsavers does not determine commissions for their member agencies. These commissions are not paid based solely upon the sales delivered to each of the geographic distribution/representation areas. The commissions are based upon which member agency made the sale. Therefore, we will not sustain the Examiner's rejection of Appellant's claims under 35 U.S.C. § 102.

Rejection under 35 U.S.C. § 103

In rejecting claims under 35 U.S.C. § 103, the Examiner bears the initial burden of establishing a ***prima facie*** case of obviousness. ***In re Oetiker***, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). ***See also In re Piasecki***, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984). The Examiner can satisfy this burden by showing that some objective teaching in the prior art or knowledge generally available to one of ordinary

Appeal No. 2002-0828
Application No. 09/475,126

skill in the art suggests the claimed subject matter. ***In re Fine***, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988).

Only if this initial burden is met does the burden of coming forward with evidence or argument shift to the Appellants.

Oetiker, 977 F.2d at 1445, 24 USPQ2d at 1444. ***See also Piasecki***, 745 F.2d at 1472, 223 USPQ at 788.

An obviousness analysis commences with a review and consideration of all the pertinent evidence and arguments. "In reviewing the [E]xaminer's decision on appeal, the Board must necessarily weigh all of the evidence and argument." ***In re Oetiker***, 977 F.2d at 1445, 24 USPQ2d at 1444. "[T]he Board must not only assure that the requisite findings are made, based on evidence of record, but must also explain the reasoning by which the findings are deemed to support the agency's conclusion." ***In re Lee***, 277 F.3d 1338, 1344, 61 USPQ2d 1430, 1434 (Fed. Cir. 2002).

Claims 7, 14, 21, 28, 30-35 and 37-42 stand rejected under 35 U.S.C. § 103 as being unpatentable over Travelsavers in view of Smithies. We note that the Examiner is relying on Travelsavers for the teaching of allocating commissions based solely upon the value of said sales delivered to each of the

Appeal No. 2002-0828
Application No. 09/475,126

geographic distribution/representative areas. Furthermore, we fail to find that Smithies teaches this limitation. Therefore, we will not sustain this rejection for the same reasons as above.

In view of the foregoing, we have not sustained the Examiner's rejection of claims 1-6, 8-13, 15-20, 22-27, 29 and 36 under 35 U.S.C. § 102 and we have not sustained the Examiner's rejection of claims 7, 14, 21, 28, 30-35 and 37-42 under 35 U.S.C. § 103.

REVERSED

MICHAEL R. FLEMING)	
Administrative Patent Judge)	
)	
)	
)	
)	BOARD OF PATENT
JOSEPH F. RUGGIERO)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
)	
)	
)	
MAHSHID D. SAADAT)	
Administrative Patent Judge)	

MRF/lbg

Appeal No. 2002-0828
Application No. 09/475,126

FREDERICK W. GIBB, III
MCGINN & GIBB, PLLC
2568-A RIVA ROAD
SITE 304
ANNAPOLIS, MD 21401